

# **Exhibit B**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

-----x 19-MD-2903 (GWC)

In Re: Fisher-Price Rock 'n Play  
Sleeper Marketing, Sales Practices,  
and Products Liability Litigation

Rochester, New York  
December 9, 2019  
10:09 a.m.

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**STATUS CONFERENCE**

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE GEOFFREY W. CRAWFORD  
UNITED STATES DISTRICT JUDGE

FOR PLAINTIFF: WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP  
BY: DEMET BASAR, ESQ.  
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10:32AM 1           **THE COURT:** So if we could put some meat on the  
2 bones. Could you -- I think all of this relates to  
3 commonality type problems, gets expressed --  
4           **MS. BASAR:** Correct.  
10:32AM 5           **THE COURT:** -- in different ways through the  
6 categories of the class action criteria. But, really, it has  
7 to do with common questions of fact.  
8           **MS. BASAR:** Sure.  
9           **THE COURT:** What are the arguments -- you're going  
10 to get -- and defendant's been very clear about this --  
11 you're going to get everything that left the company and went  
12 out to the public. That's easy.  
13           What are the arguments about commonality that you  
14 need to make that you need the internal marketing memos for?  
10:32AM 15           **MS. BASAR:** Yes. We need to show that there are  
16 common questions about this --  
17           **THE COURT:** Right.  
18           **MS. BASAR:** -- that the products, that the  
19 marketing statements were false or they were written in a way  
20 that they were misleading or that they omitted material  
21 facts. In order to get -- to be able to show that there's  
22 common evidence of that, we need to show that defendants knew  
23 that the product was unsafe. I mean, the whole underlying  
24 theory of our case is --  
10:33AM 25           **THE COURT:** Right.

10:33AM 1           **MS. BASAR:** -- is that this product is unsafe for  
2 infant sleep, defendants knew about it and they had reason to  
3 know about it from the AAP guidelines, et cetera, and they,  
4 nonetheless, continued to sell it for ten years and continued  
10:33AM 5 to make money from it.

6           So, one element is to actually show that defendants  
7 knew that in order to show that their statements are false  
8 and misleading.

9           The other thing we need to show which is extremely  
10 important is materiality. Were their marketing statements  
11 material? The box said sleeper and the name of the product  
12 is the market -- is the Rock 'n Play Sleeper. We say that's  
13 material.

14           The defendants indicated at the last hearing that  
15 they're going to challenge that. They're going to challenge  
16 materiality based on how people interpret it, their marketing  
17 statements. Fine. We need to come forward with affirmative  
18 evidence not only to first make our case but to rebut their  
19 evidence.

10:34AM 20           So they will have, as your Honor's mentioning,  
21 market research studies concerning how people will --  
22 reasonable consumers -- will interpret their marketing  
23 statements and they will have internal documents showing, you  
24 know, how they wanted to position this product. Is it going  
10:34AM 25 to be a sleeper for all night sleep or just sleep that's safe

10:39AM 1           **MS. BASAR:** But we need to present a full record to  
2 the Court and we, unfortunately, given the defendant's lack  
3 of cooperation, frankly, over the past month, if you're, if  
4 there is some kind of order that says, well, you know, just  
10:39AM 5 relating to marketing but since you're, once your -- with  
6 defendant's knowledge and scienter is, you know, has to be a  
7 common, what would be a common question, we believe based on  
8 our prior experience with the defendants over the past month,  
9 that they will take that to mean, okay, we don't need to give  
10:40AM 10 you any marketing materials --

11           **THE COURT:** Right.

12           **MS. BASAR:** -- that could possibly show that, you  
13 know, defendants had knowledge that this product was unsafe.  
14 And the question of defectiveness. We used that word and we  
10:40AM 15 all were happy with that word. But this is not that kind of  
16 case. This is not a car that if it's defective and they  
17 agree that it's dangerously defective, that, you know, that  
18 would cover the a big part of the case. This is about a  
19 product that is unsafe for infant sleep. We say throughout  
20 the class period. We say it's unsafe for infant sleep when  
21 used as instructed with the restraints.

22           **THE COURT:** Let me just keep focusing on your three  
23 issues. I understand what the record that you want on -- I  
24 call it scienter but it's probably the wrong word -- but  
10:41AM 25 state of mind of the company, materiality of the information